NO. 80-1454
And
NO. 80-1403

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IN THE

Supreme Court of the United States

OCTOBER TERM 1980

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,
Petitioner,

v.

BRENDA ANN KRONSCHNABEL,
Respondent.

CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA,
Petitioner,

v.

NOEL ZEONA STONE, WARD HERBERT STONE, SEAFARERS INTERNATIONAL UNION, PACIFIC DISTRICT-PACIFIC MARITIME ASSOCIATION PENSION PLAN,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF OF CARPENTERS PENSION TRUST FOR SOUTHERN CALIFORNIA

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Petitioner Carpenters Pension Trust for Southern California ("Trust") herein replies to the Brief in Opposition filed by Respondent Noel Zeona Stone in these proceedings. The purpose of this Reply is to address three points first raised in Respondent's Brief.

REPLY

The Trust has asserted in its petition for certiorari that California is prohibited by federal law from dragooning employee benefit plans into service for California courts as monitors, enforcers, and administrators of the courts' divisions of pension plan rights between plan participants and their ex-spouses. The Trust has not asserted that such divisions of rights are prohibited; it has only asserted that Congress intended to preclude the fifty states from converting the administative machinery of federally-regulated employee benefit plans to the use and purposes of the states.

The source of the Trust's position is the language, legislative history and intent of section 514 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. §§ 1001 et seq.) ("ERISA"). This section preempts "any and all State laws insofar as they . . . relate to any employee benefit plan" regulated by ERISA. The Trust has asserted that the California laws and court orders at issue unquestionably "relate to" these employee benefit plans and are, therefore, preempted.

Respondent opposes the Trust's petition on numerous grounds. Of these grounds, three deserve reply for reasons that will become obvious in the discussion which follows.

A. THE OFFICIAL POSITION OF THE UNITED STATES DEPARTMENT OF LABOR, CONTRARY TO RESPONDENT'S REPRESENTATION, FAVORS THE GRANTING OF A WRIT OF CERTIORARI.

Respondent first argues that the question initially posed by the Trust is moot, in part, because the United States Department of Labor, the agency charged with interpretation and enforcement of section 514, "endorses" the result below.

This contention utterly mischaracterizes the position of the Department of Labor. The Department's official position in the *Stone* case is that the California laws and orders in question ***are preempted*** by ERISA.

After finding preemption, the Department suggests that an "implied exception" might be created to save from preemption a court-ordered division of benefits by the plan in that *limited* circumstance where a plan participant is *already receiving* a monthly pension benefit. In this *narrow* sense, the Department could be said to favor the result in *Stone* where the plan participant is already receiving benefits. However, the Department can in no way be said to "endorse" or "confirm" the court order in *Kronschnabel* where the plan participant has yet to retire.

Moreover, the Department's official position is *directly contrary* to the court of appeal's wholesale validation of California court orders in the *Stone* and *Kronschnabel* decisions below. In these decisions the court of appeal finds that this Court's summary action in *In Re Marriage of Campa,* 444 U.S. 1028, 100 S.Ct. 696 (1980), decrees unpreempted the full range of California court orders available to compel employee benefit plans to administer for California the division of pension rights between plan participants and their ex-spouses. This is a finding of total nonpreemption, not of a narrow "implied exception" to an otherwise existing preemption.

In short, the Trust submits that, if asked, the United States Department of Labor would support the position of the Trust and would request that this Court grant plenary consideration to the questions presented in these proceedings.[1]

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[1] Respondent's reliance on the Interim Report by the President's Commission on Pension Policy, Congressional Record S5903, May 28, 1980, is likewise inappropriate. A review of this report demonstrates that it is a document for legislative consideration. Thus, it supports the Trust's position in its initial petition that the issue of whether California should be allowed to skirt the absolute preemption of section 514 is a decision which Congress reserved unto itself. Petition of Carpenters Pension Trust for Southern California at p. 10.

B. RESPONDENT MISCHARACTERIZES AND OVERDRAWS THE QUESTION OF PREEMPTION PRESENTED BY PETITIONER.

Respondent further opposes the Trust's petition on the ground that the Trust's interpretation of ERISA would hold preempted state laws such as building codes, workers' compensation laws and laws requiring that benefits paid be made subject to California's income tax.

Respondent's argument is an exercise in *horrendum* reasoning which is without foundation and which mischaracterizes the Trust's position. The Trust merely submits that laws which "relate to" employee benefit plans *as plans* are laws which Congress intentionally preempted. None of the foregoing examples raised by respondent "relate to" plans as plans.

C. RESPONDENT'S DESCRIPTION OF THE CALIFORNIA LAWS AND ORDERS IN QUESTION DEMONSTRATES THEIR IMPERMISSIBLE RELATION TO EMPLOYEE BENEFIT PLANS.

Finally, respondent proceeds from the preceding point to argue that the California orders in question are not preempted because they do not "conflict" with the scope and purpose of ERISA.[2] Rather, they "merely define a logical framework for an equitable distribution of the rights represented by the funds, once the funds have been properly administered by pension plans." Respondent's Brief in Opposition, p. 9.

This latter point proves too much. As the Trust submits in its initial petition, no claim of preemption is made against California's community property laws. The Trust's claim of preemption is asserted solely against the attempts of California

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[2] Respondent's use of the "conflict" standard of preemption is erroneous. Given the clarity and breadth of the language and legislative history of ERISA, the implicit preemption test of "conflict" should never be reached. See Petition of Carpenters Pension Trust for Southern California, pp. 9-14.

courts to delegate unto employee benefit plans the responsibility and liability for administering this "logical framework" of California law. ERISA regulates employee benefit plans in their receiving, holding, investing, *administering and distributing* of funds on behalf of and to individual participants. Through its laws and court orders, California seeks to bring employee benefit plans within its control for purposes of transferring to the plans the responsibility and duty of California's courts *to monitor, administer and distribute* property subject to California's community property laws. Such orders can only be viewed as relating to plans *as plans*. Accordingly, they are preempted.

D. A REPLY TO ANY OTHER CONTENTIONS RAISED BY RESPONDENT IS UNNECESSARY.

The remainder of respondent's opposition is rebutted by the Trust's initial petition and need not be reargued here.

The Trust reserves for later briefing on the merits its response to the various other assertions made by respondent. At the briefing stage, the Trust will demonstrate not only that the laws and orders in question impermissibly relate to employee benefit plans but that California may accomplish its division of community property goals by means other than those which "relate to" the Trust and that California may do so without impairing the ability of ex-spouses to collect that which California deems to be theirs.

E. CONCLUSION

For the foregoing reasons and for those set forth in the original petition, petitioner Carpenters Pension Trust for Southern California urges this Court to issue the requested Writ of Certiorari and to accord plenary consideration to the questions here presented.

Respectfully submitted,

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